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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
ISLAND COUNTY TO PENN COVE)
ASSOCIATES,)
STATE OF WASHINGTON,)
SLADE GORTON, ATTORNEY GENERAL,)
and DEPARTMENT OF ECOLOGY,)
Appellants,)
vs.)
ISLAND COUNTY,)
Respondent,)
PENN COVE ASSOCIATES,)
Intervenor.)

SHB No. 16

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a Request for Review of a substantial development permit issued by Island County to Penn Cove Associates, came before all members of the Shorelines Hearings Board (Ralph A. Beswick sitting for Bert L. Cole and William O. Hunter, Commissioner for Mason County, sitting for Tracy J.

1 Owen) as a formal hearing in the Island County Courthouse in Coupeville,
2 Washington at 9:30 a.m., June 28, 1972 and finishing on June 29, 1972.

3 The appellants, Slade Gorton, Attorney General, and Department of
4 Ecology, were represented by Robert V. Jensen and Wick Dufford,
5 Assistant Attorneys General, and W. F. Ingram appeared for intervenor,
6 Penn Cove Associates.

7 From the evidence presented (testimony and exhibits) and assisted
8 by the arguments of counsel, the Shorelines Hearings Board makes the
9 following

10 FINDINGS OF FACT

11 I.

12 On March 6, 1972, the Island County Commissioners under Ordinance
13 No. 1003 granted Substantial Development Permit No. 7-01 to the permittee,
14 Penn Cove Associates, for the installation of a marine facility in the
15 west end of Penn Cove situated on the easterly shore of Whidbey Island.
16 Certain conditions were appended to the Permit providing for water
17 quality protection, public service and access to beach areas. Representa-
18 tives of the applicant testified before the Shorelines Hearings Board that
19 Penn Cove Associates will comply with all of said conditions.

20 II.

21 The substantial development permit at issue would authorize the
22 construction of a marina on shorelines of the State located in a portion
23 of Penn Cove on Whidbey Island affecting a 25-acre tidal lagoon area and
24 contiguous uplands, beach lands fronting this lagoon area and submerged
25 lands adjacent to this beach lying seaward from the line of extreme low
26 tide.

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1 The development would provide about 260 small boat moorage spaces,
2 a percentage of which would be available to the transient public. To
3 provide the required depth, the lagoon would be dredged with most of
4 the spoil being deposited on the upland.

5 III.

6 The public can freely navigate in the lagoon with shallow draft
7 small craft only when the tide is in. The proposed project deepening
8 will provide for navigation at all stages.

9 IV.

10 The development is primarily on private land and for a private
11 purpose. However, some provision for transient moorage is required by
12 the Permit and the developer has offered to provide parking and access
13 to the public beach, to which there is at present no legal access.

14 V.

15 Compliance with existing regulations will prevent a reduction in
16 water quality which would adversely effect the aquatic plants and
17 animals. However, no testimony was presented regarding the marina as a
18 source of coliform bacteria effecting safe public utilization of shell-
19 fish from the abutting public beach.

20 VI.

21 Game bird species occasionally use lagoon as resting area during
22 severe storms, but do not use it as a feeding or nesting area. Diving
23 ducks and predator bird species do use the lagoon as a feeding area.

24 VII.

25 The lagoon contains some common species of aquatic vegetation which
26 will be eradicated by dredging, and the barrier spit along with the area

1 immediately around the lagoon, supports some salt grass and other
2 riparian species which will be eradicated by filling.

3 VIII.

4 There is no significant clam population within the lagoon, however,
5 approximately two acres of public clam beach would be rendered unavail-
6 able to the public by dredging the proposed access channels.

7 IX.

8 The proposed project avoids construction of breakwaters and does
9 not change the general configuration of the shoreline, except by
10 deepening the lagoon and some limited filling associated with the
11 marine development. There was no testimony opposing the filling as such.

12 X.

13 There was no local opposition to the project reflected in the
14 testimony. There appears to be support from all members of the general
15 public testifying before the Board. Opposition by personnel from
16 resource agencies appearing before the Board, was equally unanimous.

17 From these Findings of Fact, the Shorelines Hearings Board comes
18 to these

19 CONCLUSIONS

20 I.

21 The Shoreline Management Act of 1971 requires sufficient enhance-
22 ment of the public interest to offset any reduction in rights to
23 navigation. We conclude the proposed development presents only a
24 limited reduction in rights of navigation which is more than offset by
25 the improvement which in itself is an aid to navigation.

26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

II.

The Shoreline Management Act contemplates protecting against adverse effects to public health. There is no evidence that the development cannot be made in compliance with all public health standards. We conclude the proposal does pose a threat to public health due to its proximity to the public clam beach and the current lack of restrictions on sewage discharge by small craft.

III.

The Act contemplates protecting against adverse effects to the land. We conclude the proposal does not adversely effect the land by erosion slides and beach starvation, but spoil deposit within 200 feet of the shoreline will be unsightly and could threaten water quality.

IV.

The Act contemplates protecting against adverse impact on wildlife. We conclude that use of the lagoon by wild birds will be adversely effected by the proposal. Both the predator species which feed on aquatic life in the lagoon and other species which use the lagoon as an occasional refuge from severe storms, will be dispossessed by the marina. Due to the benefit of reduced bird predation on young salmon, this adverse effect may be partially offset.

V.

The Act contemplates protecting against adverse effects to vegetation. The development would virtually eradicate all vegetation on the development site. However, the vegetation involved is of limited extent and of common widespread species. Therefore, we conclude the effect on vegetation of limited significance.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

VI.

The Act contemplates protecting against adverse effects on aquatic life. The development would eliminate approximately two acres of public clam beach by conversion into access channels for the marina.

VII.

There is no evidence that the development cannot be made in compliance with all water quality standards, and therefore conclude that there will be no lasting adverse effect on water quality.

VIII.

The Act prescribes that developments be unique to or be dependent on the State's shoreline and that such developments provide an opportunity for substantial numbers of people to enjoy the shorelines of the State. We conclude the proposed development to be essentially in compliance with these provisions.

IX.

The Act requires that developments minimize insofar as practical, any resulting damage to the shoreline area and any interference with public use of the water. It is apparent from the proposal that an effort has been made to minimize such impacts. However, we find the risk to the abutting public shellfish beach not effectively minimized.

Therefore, the Shorelines Hearings Board makes this

ORDER

On the basis of the foregoing Findings of Fact and Conclusions, it is hereby Ordered that the decision of Island County be upheld subject to the following conditions:

FINDINGS OF FACT
CONCLUSIONS AND ORDER

- (1) That prior to commencement of construction, the permittee must supply a legal public easement to the County providing public access to the public beach, and public parking as prescribed by the County.
- (2) That prior to commencement of construction, permittee must provide a minimum of two acres of comparable intertidal public clam bed acceptable to the Department of Fisheries as replacement or deed two acres of uplands as approved by the Department of Natural Resources to serve as access to existing state-owned tidelands which are currently without public access.
- (3) That prior to commencement of construction, the permittee provide to the County and the State Department of Fisheries a plan of development, operation and maintenance, approved by the Washington State Department of Social and Health Services, which will not prevent classification of the public beach as meeting the national standard for commercial shellfish production.
- (4) That prior to commencement of construction, the permittee provide to the Washington State Department of Fisheries insurance or personal surety in the amount of \$10,000.00 each year for ten years, guaranteeing the public beach will not be declared unsafe for public shellfish collection due to impacts caused by the operation or presence of the proposed development. The public is to be compensated at the rate of \$50.00 per chain per year for so much beach as is declared by the State Department of Social and Health Services as unsafe for public shellfish

collection, with payment of the above amount made to the Department of Fisheries at the time the beach is so declared. The above assurance is not to replace any other obligations of the permittee under the law.

(5) No spoil is to be deposited north of the County road and within the 200 foot Shoreline Management Act strip.

(6) That the permittee provide to the Washington State Department of Fisheries, a survey and report of conditions existing on, affecting the public beach prior to the beginning of construction said survey and report to be made according to standards and methods specified by the Washington State Department of Social and Health Services and the Washington State Department of Fisheries. This survey and report is to be accomplished at no expense to the above agencies who are to be reimbursed for their costs, if any, associated therewith.

DONE at Olympia, Washington this 27th day of December, 1972.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Matthew W. Hill
MATTHEW W. HILL, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

William O. Hunter
WILLIAM O. HUNTER, Member

James T. Sheehy
JAMES T. SHEEHY, Member

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